

# **COUNTY OF YORK**

## **MEMORANDUM**

**DATE:** December 1, 2003 (BOS Mtg. 12/16/03)

**TO:** York County Board of Supervisors

**FROM:** James E. Barnett, County Attorney

**SUBJECT:** Voluntary boundary line agreement with James City County, Virginia

Resolution R03-197, if approved, would authorize the County Administrator to execute a voluntary boundary line adjustment agreement between York County and James City County. The adjustment is quite minor, and in fact is for the purpose of establishing that the true boundary between the two jurisdictions should be where both jurisdictions have assumed it to be for many years, and where the tax maps of both jurisdictions show it to be.

This action is taken in response to a lawsuit in the York County Circuit Court over land title which has arisen between the Laurel Lake Waterfront Property Owners Association on the one hand, and Gary T. Fout (owner of the KOA Campground near Skimino Creek) on the other, over a patch of ground of possibly one acre in area on the southern side of Skimino Creek for a short distance as the creek exits the spillway for Barlow's Pond. The County's maps show the land in question to lie in York County, and to be part of the common area for Laurel Lake. James City County's maps likewise show the disputed land to lie in York County. Mr. Fout has recently claimed not only that the land is his, but also that the parcel in question is properly located in James City County. It is Mr. Fout's contention that Skimino Creek, which has formed the jurisdictional boundary of York County since the 1600's, was artificially rechanneled at some time in the past when the Barlow's Pond outfall was relocated, but that it is the old riverbed for Skimino Creek that still forms the legal boundary between James City County and York County. The true location of the historic boundary is a factor in the competing real estate title claims, for reasons I will not go into at length and with which the County is not directly involved. At issue, for your information, are deeds in the claims of title to the litigants in which the location of the jurisdictional line is relevant to the description of the property being conveyed, hence the need to determine the location of the line as of the date of the transfer.

Although the County has taken no position with respect to the conflicting land title claims, both York County and James City County have an interest in establishing

where their common boundary line is. Indeed, there is at least some record evidence to support Mr. Fout's claim, and other evidence which seems to refute it. Attached, for example, is an excerpt from a 1971 plat of record in York County which suggests that the current location of Skimino Creek is the result of a spillway relocation. Whether this plat correctly shows the location of an older creek bed is unclear. Moreover, the Virginia Department of Transportation (VDOT) has indicated that it, too, understands Skimino Creek to have been artificially relocated at some point in the past. Given those facts, the staffs and chief administrative officers of both jurisdictions have decided that it is advisable to ask each of the county boards to clarify where the common boundary line should be, and both counties (at least at the staff level) have agreed that it should be located precisely where we have always assumed it to be, namely, the centerline of Skimino Creek. The attached draft voluntary agreement would accomplish that task. Also attached is a reduced copy of a survey plat showing the location of the proposed boundary line along the centerline of the creek. It is, I believe, not possible to show on a modern survey the location for any older streambed for Skimino Creek, as no prior surveys have been discovered, and it appears not to be possible from an examination of the ground to determine where Skimino Creek may formerly have run. Indeed, there are traces of older streambeds in the area, but whether any of them represented the main channel of Skimino Creek in former times is open to speculation.

You should be aware that the lawsuit between Mr. Fout and the Laurel Lake Waterfront POA has been nonsuited. However, as the case was proceeding, the judge ruled, over the County's argument to the contrary, that the establishment of the boundary line between the two jurisdictions by voluntary agreement would of necessity resolve the title claims between Mr. Fout and the Laurel Lake Waterfront POA. That is, the judge seemed to indicate that if the two jurisdictions were to agree upon a more southerly route for the boundary such that the property in question would then be in James City County, Mr. Fout would prevail on his title claim. On the contrary, if current Skimino Creek were selected as the boundary line, the property would be in York County and the Laurel Lake Waterfront POA would prevail. For that reason, you may hear urgent pleas from either Mr. Fout and/or the Laurel Lake Waterfront POA to resolve the boundary line issue in a manner which resolves the land title issue in their favor. However, contrary to the court's suggestion, I do not believe that the establishment of the boundary line as per the proposed agreement will affect the land title claim one way or another. The statute pursuant to which a voluntary boundary line adjustment agreement may be made deals with prospective boundary line adjustments only, and does not purport to resolve the question of the location of Skimino Creek in prior decades, much less in prior centuries. Indeed, there is a statutory procedure to determine the location of

historical boundary lines, but that procedure requires the circuit courts of each affected jurisdiction to appoint commissioners to study the matter and to make a report to the courts, with the possibility of a trial if the commissioners are unable to agree. However, whether Skimino Creek formerly existed in a more southerly location is a matter not before this Board at all. By approving the execution of the draft agreement, this Board would only be saying that the centerline of Skimino Creek for a portion of its length below Barlow's Pond would *henceforth* be established as the correct boundary line.

If the Board desires to resolve this matter by establishing the centerline of Skimino Creek as the boundary line between York County and James City County for a distance of approximately 630 feet below the outfall of Barlow's Pond, then I recommend the adoption of the attached resolution.

The Board of Supervisors for James City County will likewise be considering this matter at its meeting of December 16. If both Boards approve the agreement, a petition must be filed in the circuit court of either York County or James City County to approve the boundary relocation.

Barnett/3340:swb

Attachments:

- Draft Voluntary Boundary Line Adjustment Agreement
- Excerpt from 1971 plat and plat dated February 14, 2003
- Resolution R03-197